

October 4, 2013

Ann Turtle
3574 Gold Creek Lane
Sacramento, CA 95827

Re: Your Request for Advice
Our File No. 13-133

Dear Ms. Turtle:

This letter responds to your request to withhold disclosure of a confidential settlement under Commission Regulation 18740. However, in light of the conclusion that the settlement need not be reported, we are issuing formal written advice under Section 83114(b) of the Political Reform Act (the "Act").¹ Thus, it is unnecessary to proceed as an exemption request under Regulation 18740. This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Are you required to disclose your former employer as a source of income on your 2012 Statement of Economic Interests in light of a settlement you reached with the employer in 2012, considering that you left your position with the employer in 2010 and had reported all income received up to the date your employment ended on your assuming office statement?

CONCLUSION

No, you are not required to disclose your former employer as a source of income on your 2012 Statement of Economic Interests.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You were hired by the California State Assembly in March 2011, after leaving your position with your former employer in December 2010. Upon assuming your position with the California State Assembly, income in excess of \$100,000 previously received from your former employer was fully disclosed on your assuming office statement. However, in January 2011, you filed a claim against your former employer with the California Division of Labor Standards Enforcement. In July 2012, you reached a settlement agreement with your former employer regarding the claim.

To facilitate the settlement agreement, both you and your former employer signed a confidentiality agreement and a mutual non-disparagement agreement. In telephone conversations, you have stated that the confidentiality agreement was entered at the request of your former employer because the employer had ongoing litigation involving similar claims with other employees. The settlement agreement was approved by the Alameda Superior Court.

ANALYSIS

Section 81002(c) of the Act states that, “Assets and income of public officials which may be materially affected by their official action should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.” To accomplish this purpose, the Act requires public officials who make or participate in the making of governmental decisions to file statements disclosing their economic interests (Sections 87201, 87202, and 87302(b)) and prohibits officials from making, participating in making, or using their position to influence a decision that may have a reasonably foreseeable material financial effect on their economic interests (Section 87100; Regulation 18700).

Your inquiry involves your potential economic interest in your former employer as a source of income after reaching a settlement with the employer in 2012 based upon your employment with the employer in 2010. For purpose of the Act, “income” is “a payment received” such as “any salary, wage, advance, dividend, interest, rent proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer....” In regard to an economic interest in a source of income, Section 87103 states that:

“A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

[¶]...[¶]

“(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars or more in a value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.”

However, pursuant to Regulation 18703.3(b), “source of income” for purposes of Section 87103(c) does not include a former employer if:

“All income from the employer was received by or accrued to the public official prior to the time he or she became a public official; the income was received in the normal course of the previous employment; and there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer.”

While you reached a settlement agreement with your former employer in 2012, this agreement was based upon your employment with the employer that ended in 2010, and you have provided no indication that you expect to renew your employment with your former employer. Previously, we have advised that income from a settlement agreement resulting from work performed with a prior employer is accrued in the year that the work was performed not the year in which the settlement is reached. (*Sun* Advice Letter, No. A-11-110.) Accordingly, so long as there is no expectation of renewed employment, your former employer is not considered a source of income for purpose of disqualification under the Act’s conflict of interest provisions. (Sections 87100 *et seq.*; also see Regulation 18703.3(b).)

Notwithstanding the fact that income from a past employer is not disqualifying if there is no expectation of renewed employment, we have generally advised that the income, including income from a settlement with a former employer, is reportable in the year received. (*Sun* Advice Letter, *supra.*) However, the factual circumstances you have provided warrant a closer examination of whether the settlement agreement you have reached is reportable under the Act.

In addition to the fact that the settlement agreement is not considered disqualifying income for purposes of the Act’s conflict-of-interest provisions, it is significant that the agreement has been approved by the Alameda County Superior Court and that the confidentiality of the agreement was requested by your former employer and necessitated by the fact that the employer had ongoing litigation involving similar claims. It is also significant that income from the employer received in 2010, in excess of \$100,000, was fully disclosed on your previously filed assuming office statement.

Thus, in these specific circumstances, weighing the marginal public interest in additional disclosure to the severity of breaching the settlement agreement, we find no compelling reason to require the additional disclosure of the agreement beyond the information that has already been disclosed.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Brian G. Lau
Counsel, Legal Division